

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No 96-45
Universal Service)	
)	

OPPOSITION OF AT&T CORP. TO PETITION FOR RECONSIDERATION

David L. Lawson
Christopher T. Shenk
SIDLEY AUSTIN BROWN & WOOD, L.L.P.
1501 K St., N.W.
Washington, D.C. 20005
Tel. (202) 736-8000
Fax (202) 736-8711

Mark C. Rosenblum
Judy Sello
AT&T Corp.
Room 1135L2
295 Maple Avenue
Basking Ridge, New Jersey 07920
Tel. (908) 221-8984
Fax (908) 221-4490

Attorneys for AT&T Corp.

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Pursuant to the Commission's *Notice*,¹ AT&T Corp. ("AT&T") submits this opposition to the Petition for Reconsideration² filed by the Maine and Vermont commissions seeking reconsideration of the *2002 Line Counts Update Order*.³

INTRODUCTION AND SUMMARY

The Commission will grant a petition for reconsideration only if the petition "relies on facts which have not previously been presented to the Commission" and (1) "relate[s] to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;" (2) the new facts "were unknown to the petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or (3) "consideration of the facts relied on [by petitioners] is required in the public interest." 47 C.F.R.

¹ Petition for Reconsideration of Action in Rulemaking Proceeding, 67 Fed. Reg. 48, 11116 (March 12, 2002).

² Petition for Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed February 22, 2002) ("*Petition*").

³ Order and Order On Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (released December 18, 2001) ("*2002 Line Counts Update Order*").

1.429(b); *see also* 47 U.S.C. § 405(a).⁴ The *Petition* fails to satisfy this standard and should be denied.

The *Petition* asserts that the “key concerns now identified by Petitioners were not known, nor could they have been known until after the [2002 *Line Counts Update Order*] . . . was issued.” *Petition* at 8. According to Petitioners, the facts necessary to assess the impact on Maine and Vermont carriers of updating the line counts used in the Commission’s Synthesis Cost Model were unavailable to them prior to the 2002 *Line Counts Update Order*. This claim does not withstand scrutiny.

The 2002 *Line Counts Update Order* reflects the same method for updating line counts as the 2001 *Line Counts Update Order*.⁵ And Petitioners concede that, as a result of last year’s line counts update, the amount of universal service support for Maine and Vermont declined. Petitioners can hardly feign surprise that the same update process, one year later, has had a similar effect. Universal service support necessarily fluctuates from year-to-year among states due to relative changes in line counts and other factors. In 2002, updating line counts reduced support in a number of states, but increased support in a number of others. That is entirely predictable and appropriate.

Indeed, Petitioners had access to all of the information necessary to fully access the impact of the Commission’s proposal to update line counts well before the Commission

⁴ *See also* First Report and Order and Memorandum Report and Order, *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Wireless Services, Including Third Generation Wireless Systems*, 16 FCC Rcd. 17222, ¶ 33 (2001) (summarizing the Commission’s rules for granting a petition for reconsideration).

⁵ Order, *Federal-State Joint Board On Universal Service*, 15 FCC Rcd. 23960 (December 8, 2000) (“2001 *Line Counts Update Order*”).

issued the *2002 Line Counts Update Order*. As explained below, prior to the release of the *2002 Line Counts Update Order*, all interested parties had access to the Synthesis Cost Model as well as the proposed updated inputs and, therefore, could have computed the impact of updating line counts before the *2002 Line Counts Update Order* was released. Thus, Petitioners either knew or could easily have determined that Verizon's universal service support for Maine and Vermont would decline as a result of line counts updates.

In any event, Petitioners' challenges to the Commission's established line count update methodology are both without substance and procedurally improper. Petitioners claim that the 2000 ARMIS line count data used by the Commission to update line counts are flawed because that data overstate the number of special access lines in Maine and Vermont. But the only "evidence" that Petitioners provide in support of this claim is a bare assertion that Verizon has admitted to them that it misstated its special access lines in Maine and Vermont in its 2000 ARMIS submission. Verizon, of course, fully participated in the Commission's *Line Counts Update* proceeding and had every incentive to raise any problems with the 2000 ARMIS data that would have reduced the amount of universal service support it receives in Maine and Vermont – Verizon serves virtually all local customers in those states and, therefore, is the recipient of almost all of the universal service support allocated to those states. Verizon, however, fully supported the Commission's proposal to update line counts based on the 2000 ARMIS data and never claimed to have substantially overstated its special access line counts in its 2000 ARMIS submission. Thus, Petitioners' unsubstantiated hearsay evidence that Verizon over-reported special access lines for Maine and Vermont is not reliable and is plainly insufficient to warrant reconsideration of the Commission *2002 Line Counts Update Order*.

Petitioners remaining arguments challenge various Commission findings in other universal service orders. As explained below, to the extent that Petitioners believe there are grounds for reconsideration or review of those prior Commission orders, Petitioners must challenge those orders directly, and should not be permitted to launch collateral attacks in this proceeding. Alternatively, Petitioners could raise these issues in the Commission's upcoming comprehensive proceeding to study improvements in the universal service support mechanism. *See 2002 Line Counts Update Order* ¶ 23. In any event, for the reasons discussed below, Petitioners have provided no evidence that any reduction in Verizon's Maine and Vermont universal service support has resulted from the alleged errors in prior Commission decisions.

Finally, even if Petitioners' claims had merit, Petitioners' proposed remedy would have to be rejected. According to Petitioners, Verizon and other carriers should be permitted to obtain the higher of the universal service support for which it is now eligible in each state or that for which it was eligible in 2000. But that remedy could not practically be implemented because, as explained below, that remedy would result in claims on the universal service fund that exceed the size of the fund.

I. THE IMPACT OF UPDATING LINE COUNTS IS WELL KNOWN.

Petitioners claim that they "had no reason to expect[] . . . that routine updating of line counts would substantially reduce the support available for Verizon customers in their states." *Petition* at 9. That claim cannot be reconciled with the facts. The *2002 Line Counts Update Order* is the *second* time that the Commission has updated line counts. The Commission first updated line counts in its *2001 Line Counts Update Order*, which, as Petitioners concede, also resulted in decreased support for Maine and Vermont. *See Petition* at 9. Thus, Petitioners

did, in fact, have reason to expect that line count updates would decrease the amount of universal service support received by Verizon in 2002.

Even without this prior experience, however, Petitioners had full access to the information necessary to assess the impact of updating line counts. The Commission's numerous universal service orders clearly explain how changes in line counts affect universal service support levels. The Commission adopted, in 1999, its current method for computing universal service support after reviewing numerous comments from incumbent local exchange carriers, competitive local exchange carriers, interexchange carriers, industry associations, and consumer associations, as well as the recommendation of the Joint Board on Universal Service. *See Ninth Report & Order And Eighteenth Order On Reconsideration, Federal-State Joint Board on Universal Service*, 14 FCC Rcd. 20432 (1999) ("*Ninth R&O*") (adopting methodology for computing high-cost support); *Tenth Report And Order, Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, 14 FCC Rcd. 20156 (1999) (adopting inputs to be used for computing high-cost support) ("*Tenth R&O*"). Those orders clearly and fully explain how universal support is computed. Furthermore, in a subsequent order, the Commission further provided specific numerical examples illustrating how the universal service support is computed, and how changes in line counts may affect the level of support. *See Twentieth Order On Reconsideration, Federal-State Joint Board on Universal Service*, 15 FCC Rcd. 12070, ¶¶ 7-117 (released April 7, 2000).

Annual line count updates are an established component of universal service support estimation: "Absent an update of line count input values, the use of reported lines in the support methodology would cause non-rural support to increase indefinitely as reported lines increase." *See 2001 Line Counts Update Order* ¶ 9. Updating line counts avoids this problem

by ensuring that the economies of scale associated with increased line counts (or the diseconomies of scale associated with decreased line counts) are reflected by the universal service support mechanism. *See 2002 Line Counts Public Notice* at 3 n.11 (“updated line counts enable the model’s cost estimates to reflect the economies of scale generated by serving an increasing number of lines”); *2001 Line Counts Update Order* ¶ 9 (same). Even Verizon – the incumbent LEC that receives virtually all available universal service support in Petitioners’ states – recognized in both its *2000* and *2001* comments in response to the Commission’s *Line Counts Update Public Notices* that updating line counts “allows the model to reflect increasing economies of scale as demand grows.” Verizon Comments, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 2 (filed October 4, 2001) (“Verizon 2001 Comments”). Thus, it is hardly a secret, as Petitioners suggest, that updating line counts can substantially change the amount of universal service support for which carriers are eligible.

Petitioners’ related claim that the Commission’s “Notice did not allow Petitioners to estimate the effect of increased special access line counts because of the Commission’s proprietary treatment of critical data” is also specious. *Petition* at 9. The portion of the line count data relating to wire centers that receive support are publicly available,⁶ and the rest of the line count data are available for inspection pursuant the Interim Protective Order.⁷ Because that line count data were submitted by LECs no later than July 31, 2001, well *before* the *2001 Line*

⁶ *See Order, Federal-State Board on Universal Service*, FCC 00-125, CC Docket No. 96-45, ¶ 9 (released April 7, 2000).

⁷ *See Interim Protective Order, Federal-State Joint Board on Universal Service*, DA 00-773, CC Docket No. 96-45, ¶ 1 (released April 7, 2000) (“This Interim Protective Order is intended to facilitate and expedite review of line count data at the wire center level submitted pursuant to sections 36.611, 36.612, and 54.307 of the Commission’s rules for wire centers not receiving high-cost universal service support”).

Counts Public Notice was issued, Petitioners had ample time to obtain and analyze that information before the Commission issued its *2002 Line Counts Update Order*.

In this regard, Petitioners concede that by October 2001 – about three months before the *2002 Line Counts Order* was issued – they had obtained the necessary input data from the Commission to assess the impact of updating line counts on support levels. But Petitioners claim that they inadvertently applied that data to the wrong version of the Commission’s Synthesis Cost Model. According to Petitioners, “[t]he Commission had previously indicated that it would be abandoning the current version of the Synthesis Model in favor of a new ‘Delphi’ computer language version” and, therefore, beginning in October, Petitioners “spent a great deal of time producing model results under the Delphi model [using the line count data the Petitioner’s claim could not be obtained] and analyzing th[ose] differences.” *Petition* at 10. In reality, the Commission merely *sought comment* on whether it should use the Delphi version of its cost model for computing universal service support.⁸ It is axiomatic that a Commission Public Notice seeking comment from interested parties does not signify a rule change.⁹

⁸ See Public Notice, *Common Carrier Seeks Comment On Translation Of Cost Model To Delphi Computer Language And Announces Posting Of Updated Cost Model*, 15 FCC Rcd. 12630, ¶ 1 (released June 20, 2001) (“*Delphi Public Notice*”).

⁹ Notably, to the extent that any uncertainty existed relating to which version of the Commission’s cost model would be used to compute 2002 support amounts, all interested parties had access to both version’s of the cost model – the Delphi and the Pascal version – from the Commission’s website. See *Delphi Public Notice* at 1-2. Moreover, conspicuously absent from Petitioners assertions is any claim that the results from their Delphi analysis resulted in universal service support levels that are materially different from those ultimately adopted by the Commission.

II. PETITIONERS' COLLATERAL ATTACKS ON OTHER ORDERS ARE BASELESS AND PROCEDURALLY IMPROPER.

Petitioners claim that Verizon's Maine and Vermont universal service support was substantially reduced because of errors in the 2000 ARMIS data used to update line counts and due to various other purported mistakes in applying the 2000 ARMIS data to compute support amounts. Petitioners, however, offer no valid evidence that the 2000 ARMIS data are inaccurate. Moreover the purported "errors" in applying the ARMIS data identified by Petitioners are nothing more than collateral attacks on prior Commission decisions. And, as this Commission has emphasized, it will not entertain collateral attacks of on order disguised as a petition for reconsideration of another order.¹⁰ In all events, Petitioners' procedurally improper claims are also baseless.

A. Petitioners Provide No Valid Evidence That The 2000 ARMIS Data Are Inaccurate.

Petitioners assert that the 2000 ARMIS data reported by LECs is inaccurate and cannot be relied upon compute universal service support. Petitioners' only "evidence" to support that claim is that "Verizon has informed Petitioners that, but for the changed definition in the 2000 ARMIS report, special access line counts in Vermont and Maine would have *decreased* in 2002." *Petition* at 9 (emphasis in original). This hearsay can be given no weight. Verizon fully

¹⁰ See, e.g., Order on Reconsideration, *DATARADIO CORPORATION; Emergency Petition for Waiver of Section 90.547 of the Commission's Rules*, DA 01-2843, ¶ 12 (released December 6, 2001) (explaining that the Commission will not "entertain a collateral attack on the Commission's [prior] decision" and that the "appropriate avenue to pursue these issues further was to reconsideration of [the prior order]"); Memorandum Opinion And Order, *Amendment of Section 73.606(b) Table of Allotments Television Broadcast Stations*, 14 FCC Rcd. 18983, ¶ 7 (1999) (rejecting a petition for reconsideration because it alleges "untimely collateral attacks upon" a prior Commission Order); *MCI v. Pacific Northwest Bell Telephone Company*, 5 FCC Rcd. 216, n.38 (1990) (noting that plaintiffs' assertions "do not create a dispute about a material fact but are, instead, impermissible collateral attacks on decisions adopted in a proceeding in which their right to review has expired").

participated in the proceedings adopting ARMIS data to compute universal service support and Verizon fully participated in the *2001 Line Counts Update* proceeding. Verizon has never publicly claimed to have misreported its special access line counts even though as Petitioners now claim, that “error” decreases the amount of universal service support received by Verizon.¹¹ Furthermore, Petitioners even fail to identify the “changed definition” that purportedly caused Verizon to misreport the number of special access lines or how those changes resulted in errors in Verizon’s ARMIS report. Even if such changes were made, they were not made (or even discussed) in the Commission’s *2002 Line Counts Order*. Any such changes would have been made in prior Commission proceedings. This proceeding is not the appropriate avenue for attacking those prior Commission decisions.

Petitioners also assert that the data used by LECs to report 2000 ARMIS line count data are unreliable because that data comes from three separate LEC databases. *Petition* at 15. However, Petitioners do not explain how a LEC’s reliance on alternative sources of data to complete 2000 ARMIS forms alone makes that data inaccurate. And, in the absence of evidence to the contrary, it would seem that cross-checking several databases would tend to *improve* the accuracy of the reports.

Petitioners further claim that the ARMIS 2000 ARMIS data may be inaccurate because LECs other than Verizon may have misreported “Private Lines” and “nodes and channel counts.” *Petition* at 16-17. Once again, however, Petitioners offer no evidence to support their assertions. Instead Petitioners cite only to “apparent” “irregularities” and chide the Commission

¹¹ Notably, Verizon fully supported the use of 2000 ARMIS data to update the line counts used to compute universal service support. *See* Verizon 2001 Comments at 2 (“[u]pdating line counts on an annual basis is appropriate, as it allows the model to reflect increasing economies of scale as demand grows”).

for failing to “demonstrate[] that it has investigated . . . whether the data reports . . . are reliable.” *Petition* at 17. None of the supposed errors rises above mere speculation, and Petitioners simply ignore the many Commission proceedings that have directly addressed issues of ARMIS report accuracy. *See, e.g., Order, Revision of ARMIS Annual Summary Report, ARMIS USOA Report, ARMIS Joint Cost Report, ARMIS Access Report, ARMIS Service Quality Report, ARMIS Customer Satisfaction Report, ARMIS Infrastructure Report, ARMIS Operating Data Report, ARMIS Forecast of Investment Usage Report, and ARMIS actual Usage of Investment Report for Certain Class A and Tier 1 Telephone Companies*, AAD 95-91, CC Docket No. 86-182 (released December 8, 2000). To the extent that Petitioners believe that the Commission’s findings in those proceedings are insufficient to ensure accurate line count reporting, Petitioners should seek reconsideration or review of those proceedings, not of the *2002 Line Counts Update Order*.

B. Petitioners’ Criticisms Of The 1999 Data Request Must Be Rejected.

Petitioners next attack the Commission’s reliance on the data collected in its *1999 Data Request* to allocate the lines reported in the 2000 ARMIS submissions by class of service and to divide special access lines among wire centers. *See Petition* at 18-21. The Commission’s Synthesis Cost Model computes costs based on line counts for different classes of service. The 2000 ARMIS data reported by LECs, however, does not group line counts by service class. That is because LECs, including Verizon, have persuaded the Commission that it is unduly burdensome to provide that information on a quarterly, or even an annual, basis. *See, e.g., Verizon 2001 Reply Comments* at 1 (“[t]his new reporting requirement would be both unnecessary and unduly burdensome”). As a result, the Commission relies on the data reported by LECs in response to the Commission’s *1999 Data Request*, which does show line counts by

service class, to estimate the portion of lines reported by carriers in 2000 that should be allocated to special access.

Petitioners assert that this process produces inaccurate results and that the Commission erred in relying on the data obtained from the *1999 Data Request* to allocate the lines reported by carriers in the 2000 ARMIS reports. *See Petition* at 18-21. The Commission has already – at least twice – sought comment on this issue and fully explained why it is appropriate to continue using data obtained from the *1999 Data Request* to allocate lines. Petitioners untimely criticisms must, therefore, be rejected. The Commission’s *2002 Line Counts Update Public Notice*, for example, specifically proposed to allocate “line counts . . . to the classes of service used in the model based on the line count data filed pursuant to the *1999 Data Request*” and “to divide the 2000 ARMIS special [access] lines among wire centers in the same proportion as the special lines from the *1999 Data Request*.” *2002 Line Counts Public Notice* at 2-3. Numerous commenters, including Verizon, supported the Commission’s proposal. *See Verizon 2001 Comments* at 1-2. And the Commission’s orders fully explain why the Commission has determined that it is appropriate to allocate 2000 ARMIS line counts in this way. *See 2002 Line Counts Update Order* ¶¶ 13-15. Thus, Petitioners had ample opportunity to voice their concerns during both the *2001 Line Counts Update* proceeding and the *2002 Line Counts Update* proceeding. Because these issues do not relate to new facts that could not be known to Petitioners during the *2002 Line Counts Update* proceedings, Petitioners’ post hoc assertions are not grounds for reconsideration. *See* 47 C.F.R. § 1.429.

Even if Petitioners claims were appropriately raised here, they would have to be rejected. Petitioners fail to provide any valid evidence that the potential problems with using data from the *1999 Data Request* to allocate lines as reported by CLECs in their 2000 ARMIS

submissions resulted in understated universal service support for Maine and Vermont. First, Petitioners allege that this allocation methodology may have overstated the increase in the number of “barn” lines in Maine and Vermont. But Petitioners offer no evidence that the line counts update *actually* overstated barn counts in Maine and Vermont; Petitioners allege only that it is “likely” to have occurred. *Petition* at 18. Second, Petitioners assert that the data provided in response to the *1999 Data Request* are flawed because some reporting LECs may have misreported channel counts in response to that order. *See id.* at 19. But Petitioners have not even bothered to confirm whether their accusations that carriers have misreported data to the Commission are true; Petitioners state only that “it is not clear” whether carriers correctly reported channel counts. *Id.* Third, Petitioners assert that there is a mismatch between the way “multi-termination special access circuits” were computed for the *1999 Data Request* and the way that those counts were computed in carriers 2000 ARMIS submissions. Petitioners claim that line counts from the *1999 Data Request* cannot be used unless they are first updated without a “revised submission.” *Id.* at 20. But that claim was fully addressed by the Commission in the *2002 Line Counts Update Order* (§§ 8-9, 13-14). During that proceeding, AT&T and WorldCom argued that LECs should be required to update the information submitted in response to the *1999 Data Request*. AT&T at 5-6; WorldCom at 1. Verizon, however, claimed that the Commission should continue to rely on the data obtained from the *1999 Data Request* because that information is reasonably accurate and because it would be unduly burdensome to require LECs to update that information. *See Verizon* at 1-2. The Commission ultimately concluded that the use of the data from the *1999 Data Request* should be used “because it remains a reasonably accurate process for disaggregating line counts without imposing burdensome reporting requirements on carriers.” *2002 Line Counts Update Order* ¶ 13. If Petitioners disagree, they

should urge Verizon and the other incumbent LECs to provide updated and disaggregated data to the Commission.

C. Petitioners Criticisms of the Commission's Synthesis Cost Model Are Irrelevant And Baseless.

Petitioners assert that the *2001 Line Counts Order* should be reconsidered because (1) the PNR data relied on by the Synthesis Model appears to be unreliable and (2) because the method used by the *2001 Line Counts Order* included DS-3 lines which, according to Petitioners, the Synthesis Cost Model was not designed to accept. Neither assertion withstands scrutiny.

Petitioners complain that the PNR data, which the Commission uses to assign lines to customer locations because Verizon and other incumbent LECs have refused to provide their geocoded customer location data, "appears to be materially unreliable." *Petition* at 21. The Commission adopted the use of PNR's road surrogate algorithm to develop geocode customer locations in 1999 in the *Tenth R&O* after considering comments by numerous parties, including, for example, LECs, CLECs, interexchange carriers, and state commissions. The Commission carefully explained in the *Tenth R&O* why it chose to use the PNR data to compute universal services support. *See Tenth R&O* ¶¶ 36-62. To the extent that Petitioners believe that PNR data should not be used to compute customer universal service amounts, those concerns should have been raised with respect to the *Tenth R&O*, not to the *2002 Line Counts Order* which simply applied the rules adopted by the Commission in the *Tenth R&O*.¹²

¹² Numerous other interested parties have filed petitions for reconsideration of the *Tenth R&O*. Notably, those petitions for reconsideration include challenges to the Commission's decision to rely on the PNR road surrogate algorithm.

Petitioners claim that the Synthesis Cost Model is not designed to account for DS-3 lines is misleading. To be sure, the Synthesis Cost Model does not accept DS-3 lines as inputs. But that does not mean that the Commission's Synthesis Cost model ignores the existence of DS-3 lines. Rather, the Commission has, for the past several years, converted DS-3 lines into DS-1 and DS-0 equivalents, and has computed universal service support based on that data. Specifically, a DS-3 line has 672 channels. The model assumes that 91.75 percent of channels are DS-1 channels and that the remaining 8.25 percent of the channels are DS-0 channels. The model, therefore, accounts for DS-3 lines by converting them into about 22 DS-1 lines and about 55 DS-0 lines. As noted above, this methodology is not new, and has not been challenged by any interested parties in the past. To the extent that Petitioners seek to revise that methodology they should encourage the Commission to address that issue in its ongoing review of its universal service cost model. However, that methodology was not an issue in the *2002 Line Counts* proceeding and it is, therefore, not appropriate collaterally to challenge that methodology in this proceeding.

III. PETITIONERS' PROPOSED REMEDY IS IMPRACTICAL AND MUST BE REJECTED.

Finally, whatever the merits of Petitioners' claims, Petitioners' proposed remedy plainly must be rejected. According to Petitioners, Verizon should be permitted to obtain the higher of the universal service support for which it is now eligible in each state or that for which it was eligible in 2000. *Petition* at 27-28. That remedy could not practically be implemented. The current size of the universal service fund is fixed and is sized to produce sufficient support given the projected requirements for 2002. If carriers are permitted to receive support that is greater than that for which they are eligible in 2002, carriers' claims on the universal service

support fund would be greater than the actual size of the fund. Accordingly, Petitioners proposed remedy must be rejected.

IV. CONCLUSION

For the foregoing reasons, the Petition for Reconsideration of the *2002 Line Counts Update Order* should be denied.

Respectfully submitted,

David L. Lawson
Christopher T. Shenk
SIDLEY AUSTIN BROWN & WOOD, L.L.P.
1501 K St., N.W.
Washington, D.C. 20005
Tel. (202) 736-8000
Fax (202) 736-8711

/s/ Judy Sello

Mark C. Rosenblum
Judy Sello
AT&T Corp.
Room 1135L2
295 Maple Avenue
Basking Ridge, New Jersey 07920
Tel. (908) 221-8984
Fax (908) 221-4490

Attorneys for AT&T Corp.

March 27, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2002, I caused true and correct copies of the forgoing Opposition of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: March 27, 2002
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

SERVICE LIST

William F. Caton
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554*

Thomas L. Welch
Maine Public Utility Commission
24 State Street
18 State House Station
Augusta, ME 04333

Michael H. Dworkin
Vermont Public Service Board
112 State Street
Drawer 20
Montpelier, VT 05620

* Filed electronically